IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.535 OF 2006

Ashok Traders ..Petitioner.
Vs.
Municipal Corporation of Greater Bombay ..Respondent.

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Mr. Vinay A. Sonpal for the Petitioner.
Mr. N.A. Shaikh for the Respondent – BMC.

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CORAM : DR.D.Y.CHANDRACHUD, J.

18th January, 2007.

P.C.:

1. The Petition before the Court under Article 226 of the Constitution has been filed by a partnership firm duly registered under the provisions of the Indian Partnership Act, 1932. Originally M/s. Ashok Traders is stated to have been a proprietary concern of which Chimanlal Manilal Mehta was the sole proprietor. Upon his death in the year 1987 a deed of partnership is stated to have been entered into by his two sons Ashok and Sudhir. During his life time Chimanlal Manilal Mehta had availed of loans from the State Bank of India. The bank instituted a suit on the Original Side

of this Court (Suit 1365 of 1983) for the recovery of its outstanding dues. The immovable property which forms the subject matter of the dispute being 129-C, Govt. Industrial Estate, Kandivali (West), Mumbai 400 069 comprises of a factory building. The property was mortgaged to the bank to secure its outstandings. On 13th December, 1984 an order was passed by a Learned Single Judge in the suit instituted by the bank by which the Court Receiver came to be appointed as Receiver. By the order of the Court the Defendants to the suit were permitted to continue as agents of the Receiver on terms and conditions to be settled but without security. Initially an agency was granted to the Defendants to the suit on the payment of a monthly royalty of Rs.9,000/-. Since they could not continue to act as agents, M/s. Avant Corporation came to be appointed as agents of the Court Receiver upon a monthly royalty of Rs.25,000/-. An agency agreement was executed on 15th May, 1991 under which the property taxes were liable to be paid by the agent of the Court Receiver. Upon the constitution of the Debt Recovery Tribunal, the suit was transferred to the Tribunal at Mumbai and was eventually compromised in terms of the Consent Terms that were arrived at on 29th February, 2003. The Petition recites that in pursuance of the Consent Terms the agent of the

Receiver handed over possession of the property to the Receiver appointed by the Debt Recovery Tribunal. The amount of royalty that was accumulated in the suit was paid over by the Receiver under the Consent Terms to the bank and upon the discharge of all liabilities, possession of the property was handed over to the Petitioner. On 18th November, 2005, the Petitioner transferred the premises under a deed of conveyance to Mrs. Bhairavi Kamdar and Mr. Kaushik Kamdar.

2. A demand notice was issued by the Assistant Assessor and Collector, R/S Ward on 13th March, 2003 demanding an amount of Rs. 20 lacs or thereabout towards outstanding arrears of property taxes on the basis of a revision in the rateable value from 1987 to 2003. The Petitioner addressed a representation on 26th January, 2005. According to the Petitioner the rateable value was increased from Rs.1,405/- to Rs.1,05,324/- from 1993 and thereafter to Rs.1,99,644/- from 2000. This was on the basis that the premises have been let out to the agent of the Court Receiver who was paying an amount of Rs.25,000/- per month since 1st April, 1993.

3. A writ petition was instituted before this Court (Writ Petition 1276 of 2005) which was disposed of by an order dated 29th August, 2005 passed by a Learned Single Judge. The grievance of the Petitioner being that the demand had been issued without notice and contrary to law, the Petition was disposed of by directing the Municipal Corporation to hear and dispose of a representation which the Petitioner was permitted to file in response to the demand raised by the Municipal Corporation. Accordingly, submissions were filed on behalf of the Petitioner on 3rd January, 2006. By an order dated 24th January, 2006 the Investigating Officer has rejected the representation and confirmed a revisional in the rateable value to Rs.2,09,600/- with effect from 1st April, 1993.

4. On behalf of the Petitioner it has been submitted that the only basis on which the rateable value has been revised was that compensation was fixed at Rs.25,000/- per month for the occupation of the premises by M/s. Avant Corporation who were appointed as agents of the Court Receiver. A suit was instituted by the State Bank of India for the recovery of its dues. On behalf of the Petitioner it has been submitted that the property was

custodia legis. Under Section 154 of the Mumbai Municipal Corporation Act, 1888 in respect of property which is not exempted from the provisions of the Rent Act, it is the standard rent of the premises which must be regarded as an index of the amount at which the property may reasonably be expected to let from year to year. In view of the settled position in law, it was urged that the Investigating Officer has clearly erred in taking into account the compensation that was paid by the agents of the Court Receiver to the Court Receiver for the occupation of the premises during the pendency of the bank suit.

5. Section 154 of the Mumbai Municipal Corporation Act, 1888 provides in sub section (1) that "the amount of the annual rent for which such land or building might reasonably be expected to let from year to year" provides an index of the rateable value where the land, or as the case may be, the building is not exempted from the provisions of the Rent Act. There is no dispute about the factual position that in the present case the premises are governed by rent control legislation. For the purposes of this judgment it would not be necessary to reiterate the consistent line of authority which holds the field save and except to advert to the most recent

judgment of the Supreme Court which construed the provisions of the Mumbai Municipal Corporation Act, 1888. Hon'ble Mr. Justice B. N. Srikrishna speaking for a Bench of two Learned Judges of the Supreme Court held in **Municipal Corporation of Greater Mumbai v. Kamala Mills**[1] that in a situation where the property is governed by rent control legislation to wit, the Bombay Rent Act, the rateable value under Section 154(1) is limited by the measure of the standard rent that is payable under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Court noted that the Mumbai Municipal Corporation Act does not contain a non obstante clause, that would override the application of the expression "standard rent" within the meaning of the Rent Act. Hence, in determining the amount at which property can reasonably be expected to let from year to year what is reasonable could not be in excess of the standard rent.

6. The order passed by the Investigating Officer is clearly in transgression of the settled principles of law which have been laid down by the Supreme Court ever since the judgment in **Corporation of Calcutta v. Padma Devi**[2] and reiterated thereafter

1 (2003) 6 SCC 315.
2 AIR 1962 SC 151.

in **Devan Daulat Rai Kapoor v. New Delhi Municipal Committee**[3] and more recently in **Kamala Mills** (supra). The Investigating Officer has held that the royalty paid by the agent of the Court Receiver cannot be exclusive of rent since no commercial premises would be allowed to be occupied in the city of Mumbai without monetary consideration. The Investigating Officer held that the money paid by the occupier was nothing but compensation for the beneficial occupation of the premises and it was the royalty that would form the basis for the fixation of the rateable value. The order passed by the Investigating Officer clearly ignores the stipulation contained in Section 154(1) of the Act under which it is the amount at which the property can reasonably be expected to let from year to year which forms the index of rateable value. In a situation where rent control legislation holds the field, it is impermissible to ignore the principles enunciated in the Rent Act

for the determination of the standard rent for it is the standard rent that indicates the amount at which the property can reasonably be expected to let. In the circumstances, the basis on which the

3 AIR 1980 SC 541.

rateable value was revised is flawed and would have to be quashed and set aside.

7. Rule is accordingly made absolute in terms of prayer clause (b). However, it is clarified that this shall not preclude the authorities of the Municipal Corporation from seeking to revise the rateable value in accordance with law. There shall in the circumstances be no order as to costs.